



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-UFO

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

MAR 27 2006

Carol Graybill, President and Registered Agent of
Yellowstone Truck Stop, Inc.
1226 Highway 10 West
Livingston, MT 59047

Re: UNDERGROUND INJECTION
CONTROL PROGRAM (UIC)
Ken's Equipment Repair, Inc. Facility
First Amended Proposed
Order and Penalty Complaint with
Notice of Opportunity for Hearing

Dear Mrs. Graybill:

The enclosed document is the First Amended Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing ("complaint") for violations of the Safe Drinking Water Act ("SDWA"). Please carefully read the complaint soon, since it describes Carol Graybill dba at Yellowstone Truck Stop's and Yellowstone Truck Stop, Inc.'s (together referred to as "Yellowstone") rights as owners of the Ken's Equipment Repair, Inc. property. It also describes Yellowstone's responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this complaint and, in case Yellowstone meets the criteria, an information sheet about the Small Business Regulatory Fairness Act.

Yellowstone is required to take action within 30 calendar days of your receipt of this Order to avoid the possibility of having a default judgment entered against Yellowstone that could impose the penalty amount proposed in the complaint.

Whether or not Yellowstone requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. Yellowstone may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, Yellowstone should contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.



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Public Notice of EPA's complaint and the opportunity to provide written comments on the complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the complaint has a right to participate in the hearing.

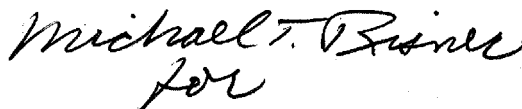
If Yellowstone has technical questions relating to this matter, the person most knowledgeable on my staff is Carol L. Hutchings, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6485 or (303) 312-6485. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6893 or (303) 312-6893. Mrs. Hutchings and Mr. Eppers can also be reached at the following addresses:

Carol L. Hutchings (Mail Code 8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466, or

Jim Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

We urge Yellowstone's prompt attention to this matter.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Order and Penalty Complaint
With Notice of Opportunity for Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

cc: Laura Alvey, MTDEQ
Lee Bruner, Esq.
Kenneth M. Merideth

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. SDWA-08-2006-0013

2006 MAR 27 AM 9:13
FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

Ken's Equipment Repair, Inc.,
a Montana corporation;

Carol Graybill, dba
Yellowstone Truck Stop; and

Yellowstone Truck Stop, Inc.,
a Montana corporation

Respondents.

)
)
) FIRST AMENDED PROPOSED ORDER
) AND PENALTY COMPLAINT WITH
) NOTICE OF OPPORTUNITY FOR
) HEARING
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INTRODUCTION

1. On February 6, 2006, the United States Environmental Protection Agency (EPA), Region 8, issued a Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing to Ken's Equipments Repair, Inc. This First Amended Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (complaint) replaces, in its entirety, the prior complaint.

2. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act) 42 U.S.C. 300h-2(c). The EPA regulations authorized by the statute are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits, or EPA regulations constitute violations of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

3. The undersigned EPA official has been properly delegated the authority to issue this Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (complaint).

4. EPA alleges that Ken's Equipment Repair, Inc., Carol Graybill dba Yellowstone Truck Stop, and Yellowstone Truck Stop, Inc. (together referred to as Respondents) have violated the

1 Act and proposes the assessment of a civil penalty and compliance measures, as more fully
2 explained below.

3 4 NOTICE OF OPPORTUNITY FOR A HEARING

5
6 5. Respondents have the right to a public hearing before an administrative law judge to
7 disagree with any factual allegation made by EPA in the complaint, the appropriateness of the
8 proposed penalty, or to present the grounds for any legal defense it may have.

9
10 6. To disagree with the complaint and assert its right to a hearing, Respondents must file
11 a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

12
13 Region 8 Hearing Clerk
14 999 18th Street; Suite 300 (8RC)
15 Denver, Colorado 80202

16
17 within 30 calendar days of receiving this complaint. The answer must clearly admit, deny or
18 explain the allegations of the complaint, the grounds for any defense, the facts which may be in
19 dispute, and request a public hearing. Please see section 22.15 of the Rules of Practice for a
20 complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND**
21 **REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE**
22 **RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR**
23 **PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND**
24 **ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO**
25 **THE MAXIMUM AUTHORIZED BY THE ACT.**

26 27 QUICK RESOLUTION

28
29 7. Respondents may resolve this proceeding at any time by remediating the site
30 surrounding the shallow waste disposal system by removing all visibly contaminated soils
31 surrounding the waste disposal system located at the Ken's Equipment Repair facility and paying
32 the penalty amount proposed in the complaint. Such action to remediate the disposal system site
33 and make payment need not contain any response to, or admission of, the allegations in the
34 complaint. Such action to remediate the disposal system site and make payment constitutes a
35 waiver of Respondents' right to contest the allegations and to appeal the final order. See section
36 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

37 38 SETTLEMENT NEGOTIATIONS

39
40 8. EPA encourages discussing whether cases can be settled through informal settlement
41 conferences. If you want to pursue the possibility of settling this matter, or have any other
42 questions, contact Jim Eppers, Senior Enforcement Attorney, at [1-800-227-8917 ; extension
43 6893 or 303-312-6893] or at the address identified in paragraph 38 herein. **Please note that**

1 calling Mr. Eppers or requesting a settlement conference does NOT delay the running of
2 the 30 day period for filing an answer and requesting a hearing.

3 4 ALLEGATIONS

5
6 The following allegations apply to all times relevant to this action, and to each count of
7 this complaint:

8
9 9. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147
10 subpart BB, section 147.1351, EPA administers the Underground Injection Control (UIC)
11 program for Class I, III, IV, and V wells in the State of Montana. The effective date of the
12 program is June 25, 1984. The program requirements are located at 40 C.F.R. Parts 124, 144,
13 146, 147, and 148.

14
15 10. On February 23, 2004, EPA received a partially completed Shallow Injection Well
16 Inventory Request Form prepared by Ken Merideth, President of Ken's Equipment Repair, Inc.
17 The Inventory Request Form identified a disposal system that includes floor drains in the
18 maintenance shop, that were accepting waste fluids and discharging the waste to an individual
19 subsurface disposal system. The form did not identify what type of subsurface distribution
20 system the floor drains were connected to. The form stated that the waste did not go to a public
21 sewer system, a surface discharge, a self-contained holding tank, a lagoon or a pond.

22
23 11. On March 19, 2004, an EPA representative performed a routine inventory
24 verification inspection of the Ken's Equipment Repair, Inc. facility, located at 1224 Highway 10
25 West, Livingston, Montana (facility). The inspection found there were two floor drains in the
26 shop area, one in the shop floor and one in the bottom of an auto maintenance pit. Mr. Ken
27 Merideth, the facility operator, told the EPA representative that he thought that the floor drain in
28 the main shop floor discharged to the sump in the auto maintenance pit. Mr. Merideth said he
29 was uncertain if the drains were hooked to the septic system or another type of system. The EPA
30 inspector witnessed motor vehicle maintenance in progress in the shop at the time of the
31 inspection.

32
33 12. Motor vehicle waste disposal wells are defined at 40 C.F.R. §144.81(16) as follows:
34 "Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or
35 maintenance activities, such as an auto body repair shop, automotive repair shop, new and used
36 car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility
37 that does any vehicular repair work."

38
39 13. Respondent Ken's Equipment Repair, Inc., from January 8, 1996 to the present, is a
40 corporation organized in and authorized to do business in the State of Montana.

41
42 14. Respondent Ken's Equipment Repair, Inc., is a "person" within the meaning of
43 Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

1
2 15. Respondent Ken's Equipment Repair, Inc., at all times pertinent to this complaint,
3 operated the facility, which was and is now used for automotive repair and maintenance.
4

5 16. Respondent, Carol Graybill, dba Yellowstone Truck Stop (Carol Graybill), a sole
6 proprietorship and doing business in the State of Montana, owned the property and buildings at
7 the facility, from at least from September 30, 1997 to December 23, 2003.
8

9 17. Respondent Carol Graybill is a "person" within the meaning of Section 1401(12) of
10 the Act, 42 U.S.C. § 300f(12).
11

12 18. Respondent, Yellowstone Truck Stop, Inc. (Yellowstone), from December 23, 2003
13 to the present, is a corporation organized in and authorized to do business in the State of
14 Montana.
15

16 19. Respondent Yellowstone is a "person" within the meaning of Section 1401(12) of the
17 Act, 42 U.S.C. § 300f(12).
18

19 20. Respondent Yellowstone, from the December 23, 2003 to the present, owned the
20 property and building at and around the facility.
21

22 21. Respondents' disposal system, as identified in the inventory verification inspection in
23 paragraph 11 above, is classified as a "Class V Injection Well" as defined by 40 C.F.R. §144.6
24 and §146.5 and is a motor vehicle waste disposal well as defined by 40 C.F.R. §144.81(16).
25 Respondents are currently authorized by rule (40 C.F.R. §144.24) to operate the disposal system
26 described above. Respondents are therefore subject to applicable requirements of 40 C.F.R. §§
27 124, 144 and 146.
28

29 22. As authorized by 40 C.F.R. §144.12(c) and (d) and 40 C.F.R. §144.88(b), on April
30 27, 2004, EPA mailed a UIC Shallow Injection Well Program letter to Ken's Equipment Repair,
31 Inc. The letter was received by Ken's Equipment Repair, Inc. on May 4, 2004. The letter
32 required the Ken's Equipment Repair, Inc. to either:
33

34 a. submit a completed permit application by June 3, 2004, or
35

36 b. submit a plan for permanent closure of the motor vehicle waste disposal portion of the
37 system (including a written schedule and plan for alternative disposal of the waste) by
38 June 3, 2004 and permanently close that portion of the system by September 12, 2004.
39 Once the system was closed or retrofitted, documentation needed to be provided to EPA
40 including an as-built sketch of the drain system showing where the changes had been
41 made.
42
43

1 23. On June 3, 2004, EPA received a plan from Ken's Equipment Repair, Inc. for closure
2 of the Class V motor vehicle waste disposal system, proposing to plug the line leaving the
3 maintenance pit floor drain and sump. The sump was to be used as a self-contained holding tank
4 for the waste disposed of into the floor drain. The letter stated that Ken's Equipment Repair, Inc.
5 would complete the system closure by the September 12, 2004 deadline.
6

7 24. On August 18, 2005, EPA representatives performed a routine inspection of the
8 facility to verify the closure of the motor vehicle waste disposal system. The inspectors found
9 the motor vehicle waste disposal system well which was to be closed by September 12, 2004,
10 was still open and operational. The EPA representatives observed used oil and likely other
11 petroleum products floating in the floor drain sump in the automotive repair bay pit.
12

13 25. On or around February 17, 2005, a representative from the Montana Department of
14 Environmental Quality (MDEQ) contacted EPA after identifying free product (used oil) in a
15 monitoring well located behind and down gradient from the facility.
16

17 26. On September 15, 2005, EPA mailed to both Ken's Equipment Repair, Inc. and to
18 Carol Graybill (owner from at least September 30, 1997 to December 23, 2003 and registered
19 agent for Yellowstone Truck Stop, Inc., owner from 12/23/2003 to the present) UIC Shallow
20 Injection Well Program Notices of Noncompliance (NON letter) for failure to close the motor
21 vehicle waste disposal system and for operating a shallow Class V disposal system in a manner
22 that may allow the movement of fluids into an underground source of drinking water (USDW)
23 containing contaminants in concentrations that may be above the MCLs for drinking water or
24 adversely affect the health of persons.
25

26 27. On October 3, 2005, EPA received a letter from the Ken's Equipment Repair, Inc.
27 stating the Class V disposal system had been closed on September 22, 2005. Ken's Equipment
28 Repair, Inc. stated the pipes for the drain system had been cemented closed. The letter also
29 identified a waste disposal service to pump the waste collected in the future in the self-contained
30 holding tank located in the automotive repair bay pit.
31

32 28. On December 15, 2005, an EPA representative performed a routine inspection of the
33 Ken's Equipment facility to verify the closure of the motor vehicle waste disposal system. The
34 inspector found the Class V motor vehicle waste disposal system had been closed. The drain on
35 the shop floor had been cemented flat with the floor and the discharge pipe from the sump in the
36 automotive repair bay pit had been cemented closed.
37

38 29. Lying underneath the disposal system are underground sources of drinking water
39 (USDWs), including but not limited to a shallow alluvial aquifer which encounter groundwater
40 between 9 to 12 feet and the widely used Livingston aquifer.
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COUNT 1

30. Respondents are in violation of 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a)(1) by owning, operating, and maintaining a Class V disposal facility which, through injection activity, allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. part 142 or may otherwise adversely affect the health of persons. The Respondents' failure to discontinue the use of its Class V motor vehicle waste disposal system may endanger or otherwise affect the health of persons. The evidence of used oil and likely other petroleum products floating in the floor drain sump in the automotive repair bay pit during the August 18, 2005 EPA inspection and the waste oil found in the monitoring well by the MDEQ show contamination and fluid movement caused by the motor vehicle maintenance activities at the Ken's Equipment Repair facility. EPA is concerned with the past and present endangerment to the underlying USDW. The duration of Respondents' violations is from February 19, 2004 to September 22, 2005.

COUNT 2

31. Respondents are in violation of 40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R. §144.88(b) for failure to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering a USDW. The duration of Respondents' violations for failure to close or retrofit the Class V disposal system is from September 12, 2004 to September 22, 2005.

PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY

32. Within 45 calendar days of the date the last Respondent receives this complaint (EPA, in writing, will notify Respondents of that date), Respondents shall submit to EPA for review and approval a plan to excavate and remove the physical structure of the discharge system outside the facility building and all associated soils and gravel. Soil removal shall include all visibly contaminated soils. The plan shall be sent to:

Carol L. Hutchings (8ENF-UFO)
Technical Enforcement Program
U.S. EPA - Region 8
999 18th Street, Suite 200
Denver, CO 80202-2466.

33. Within 45 calendar days from the date EPA approves the plan described in paragraph 32 above, the Respondents shall remove the physical structure of the discharge system outside the building and all associated soils and gravel. Soil removal shall include all visibly contaminated soils. The soils and gravels shall be disposed of properly per Federal, State, and local regulations for this type of waste.

1 34. Within 60 days of completion of work, Respondents shall submit a Closure Report
2 detailing the work done pursuant to paragraph 33 (above), including manifests or invoices for
3 disposal of the soils and gravel. The Closure Report shall be sent to EPA at the address
4 identified in paragraph 32, above.

5
6 35. The Act authorizes the assessment of a civil penalty of up to \$27,5000 per day, for
7 each violation occurring on and after January 31, 1997 and increases to \$32,500 per day, for each
8 violation of the Act occurring on or after March 16, 2004, 42 U.S.C. § 1423(b). (See also 40
9 C.F.R. Part 19) The Act requires EPA to take into account the following factors in assessing a
10 civil penalty: the nature, circumstances, extent and gravity of the violation; any economic benefit
11 or savings gained resulting from the violation; Respondents' history of such violations;
12 Respondents' culpability for the violation; Respondents' good-faith efforts to comply with
13 applicable requirements; the economic impact of the penalty on the Respondents; and other
14 factors that justice may require.

15
16 36. In light of the statutory factors and the specific facts of this case, EPA proposes that
17 a penalty of fifty-four thousand dollars (\$54,000.00) be assessed against Respondents for
18 the violations alleged above, as explained below:

19
20 Nature, Circumstances, Extent, and Gravity of Violations

21
22 Respondents owned and/or operated the facility identified and described in paragraphs 10
23 and 11 above and had the ability and means to comply with the Act by closing or
24 retrofitting the waste disposal system to prevent movement of fluids to a USDW that may
25 endanger the health or persons.

26
27 Prior Compliance History

28
29 This complaint is the first enforcement action EPA Region 8 has issued to the
30 Respondents requiring compliance with the applicable UIC regulations.

31
32 Good-Faith Efforts to Comply

33
34 Respondents did not make a good faith effort to make changes to the disposal system by
35 the required date and did not close the system until September 22, 2005.

36
37 Degree of Culpability

38
39 Respondents should have been aware of all UIC requirements prior to EPA's first contact.
40 On May 4, 2004, when Respondent Ken's Equipment Repair, received EPA's UIC
41 Shallow Injection Well Program letter (see paragraph 22, above) it had actual notice of
42 the requirements.
43

1 Carol Graybill received actual notice of the requirements in the NON letter received on
2 September 21, 2005. The disposal system at the facility was closed the next day.

3
4 Economic Benefit

5
6 An economic benefit was experienced by Respondents for failure to permit or close its
7 Class V well. The delayed cost of compliance was however, minimal.

8
9 Ability to Pay

10
11 EPA did not reduce the proposed penalty due to this factor, but will consider any new
12 information Respondent may present regarding Respondent's ability to pay the penalty
13 proposed in this complaint.

14
15 Other Matters that Justice may Require

16
17 Although considered, no adjustments were made by EPA regarding this factor.

18
19 37. Respondents' payment of the penalty shall be made by money order or certified
20 check made payable to "Treasurer, United States of America" and mailed to the following
21 address:

22 EPA - Region 8
23 Regional Hearing Clerk
24 P.O. Box 360859
25 Pittsburgh, PA 15251.

26
27 A copy of said check shall be mailed to the following address:

28
29 Jim Eppers (8ENF-L)
30 Enforcement Attorney
31 U.S. EPA - Region 8
32 999 18th Street, Suite 200
33 Denver, CO 80202-2466.

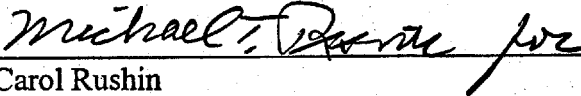
34
35 38. The provisions of this complaint shall apply to and be binding upon Respondents and
36 their respective officers, directors, agents, successors or assigns.

37
38 39. As required by the Act, prior to the assessment of a civil penalty, EPA will provide
39 public notice of the proposed penalty, and reasonable opportunity for people to comment on the
40 matter, and present evidence in the event a hearing is held. 42 U.S.C. § 1423(c)(3)(B).
41
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43

1 40. The administrative law judge is not bound by EPA's penalty policy or the penalty
2 proposed by EPA, and may assess a penalty above the proposed amount, up to either \$27,500 or
3 the \$32,500 per day for each violation as authorized in the statute.
4

5 41. This complaint does not constitute a waiver, suspension, or modification of the
6 requirements of any applicable provision of the Act or the UIC regulations implementing the Act,
7 which remain in full force and effect. Issuance of this complaint is not an election by the EPA to
8 forego any civil or any criminal action otherwise authorized under the Act.
9

10 Issued this 27th day of march, 2006.
11

12 
13 Carol Rushin
14 Assistant Regional Administrator
15 Office of Enforcement, Compliance,
16 and Environmental Justice
17 U.S. EPA, Region 8
18 999 18th Street, Suite 200
19 Denver, CO 80202-2466
20

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON FIRST AMENDED
PROPOSED ORDER AND PENALTY COMPLAINT
WITH NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
KEN'S EQUIPMENT REPAIR, INC.,
CAROL GRAYBILL, DBA YELLOWSTONE TRUCK STOP,
AND YELLOWSTONE TRUCK STOP, INC.
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL REGULATIONS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on this First Amended Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (complaint) [Docket No. SDWA-08-2006-0013] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue against Ken's Equipment Repair, Inc., Carol Graybill dba Yellowstone Truck Stop, and Yellowstone Truck Stop, Inc. (together referred to as Respondents), at the facility located at 1224 Highway 10 West, Livingston, Montana. The complaint alleges violations of the Underground Injection Control (UIC) regulations and proposes both remedies and monetary penalties for the alleged violations. The complaint is issued under the UIC provisions of the Safe Drinking Water Act (SDWA) and the Act's implementing regulations. These regulations govern the injection of fluids that may endanger an underground source of drinking water (USDW).

EPA desires to receive written comments from any interested party having knowledge of the alleged violations or who can provide any information useful to ensure that the proposed remedies and penalty are appropriate. EPA will review any comments received on the complaint, and will thereafter determine whether to modify or withdraw the complaint or whether to modify the proposed penalty and/or compliance requirements.

BACKGROUND

Part C of the SDWA requires the EPA to regulate underground injection of fluid through wells to assure that USDWs are not endangered. Section 1421 of the SDWA requires EPA to administer UIC programs in States that do not have approved State UIC programs. Regulation of the UIC Class V Program has not been delegated to the State of Montana; therefore, EPA administers the program in accordance with Title 40 of the Code of Federal Regulations (40 C.F.R.), Parts 124, 144, 146, 147, and 148.

The Class V disposal system which is the subject of this complaint, was operated by Ken's Equipment Repair, Inc. during all times pertinent to this complaint, and owned by Carol Graybill dba Yellowstone Truck Stop, and Yellowstone Truck Stop, Inc. The address of the facility is 1224 Highway 10 West, Livingston, Montana. A Class V injection well, pursuant to 40 C.F.R. 144.6 and 146.5, is a shallow injection well that injects fluids into or above a USDW. The well subject to this complaint is of the subclass titled "motor vehicle waste disposal well," and is used to dispose of internal combustion engine repair and maintenance facility wastes.

The complaint alleges that Respondents are in violation of UIC regulations and are subject to appropriate penalties and fines for failing to: (a) prevent movement of fluids into a USDW that may cause a violation of a primary drinking water regulation under 40 C.F.R. Part 142 or otherwise adversely affect the health of persons, and (b) close or retrofit the Class V disposal system in a timely manner to keep contaminants from entering a USDW. The complaint proposes that EPA assess an administrative civil penalty in the amount of fifty-four thousand dollars (\$54,000.00) and orders the Respondents to remediate the Class V waste disposal system site.

PUBLIC COMMENTS

Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) days after the publication of this notice. Written comments submitted by the public as well as information submitted by Respondents will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Respondents may request a hearing. Any person submitting written comments will be notified of and has a right to participate in such a hearing. The complaint, as proposed, and the Administrative Record are available for review between 9:00 a.m. and 4:00 p.m. at the EPA address listed below. It is recommended that those wishing to view the Administrative Record call James H. Eppers, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6893 before visiting the EPA Region 8 offices.

Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
999 18th Street, Suite 500
Denver, Colorado 80202-2466.

A copy of the complaint will also be available for public review Monday-Friday between 8:00 a.m. and 5:00 p.m. at the Park County Clerk and Recorder's Office, 414 E. Callender Street Suite 2, Livingston, MT 59047-2746.

Any person interested in receiving a copy of the notice of this UIC administrative action can call Carol Lee Hutchings in the UIC Program, EPA Region 8, at (303) 312-6485.

THE DECISION

EPA will review and consider all public comments received on the complaint and will thereafter determine whether to modify or withdraw the complaint or whether to modify the proposed penalty and/or compliance requirements. If the complaint is revised, copies will be provided to all parties and to all members of the public who have commented.

Date of Publication

Elisabeth Evans

Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-3466

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the

development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner,
Administrator.

Therefore, 40 CFR part 22 is revised to read as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.



U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7823

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman

